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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 506

J. H. CRAIN AND R. E. LEE WILSON, JR., TRUSTEES OF LEE WILSON AND COMPANY, A BUSINESS TRUST, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Claims (R. 177-196) is reported at 84 F. Supp. 876.

JURISDICTION

The judgment of the Court of Claims was entered on July 11, 1949 (R. 197). On October 3, 1949 petitioners' motion for a new trial was overruled (R. 197). The petition for a writ of certiorari was filed on December 28, 1949. The jurisdiction of this court is invoked under 28 U. S. C. 1255(1).

QUESTIONS PRESENTED

1. Whether the Secretary of Agriculture, under the Agricultural Adjustment Act of 1933, the Supplemental Appropriation Act of 1936, the Soil Conservation and Domestic Allotment Act of 1936, and the Agricultural Adjustment Act of 1938, might validly find in 1941 that overpayments had been made to petitioners in the years 1933 to 1936, and that petitioners had not complied with the regulations under the 1937 program.

2. Whether those findings are binding on the Court of Claims in the absence of a showing that they are arbitrary or capricious.

3. Whether the overpayments so determined by the Secretary of Agriculture may be set-off against payments admittedly due petitioners for 1938.

STATUTES INVOLVED

The pertinent parts of the applicable statutes are set forth in the Appendix, *infra,* pp. 11-13.

STATEMENT

Petitioners are the trustees of Lee Wilson and Company, a business trust, and in that capacity the owners of a large plantation in Mississippi County, Arkansas (R. 91). Under the Agricultural Adjustment Act of 1933, the Soil Conservation and Domestic Allotment Act of 1936, and the Agricultural Adjustment Act of 1938, petitioners participated in the crop production and soil conservation program of the Department of Agri-

culture for the years 1933 to 1938 (R. 93) and received payments for the years 1933 to 1936 (R. 109).

At the time of inauguration of this program the Agricultural Adjustment Administration issued the "1933 Cotton Adjustment Program Instructions to Field Workers" (R. 96) providing that "It is assumed that agreements by the operators and their tenants will provide for division of payments in proportion to their interest in the crop" (R. 96-97).[1] Payments were to be made under regulations on the basis of rentals paid by the Government for land taken out of cotton production (by a "plow-up") in 1933 (R. 96) and in the following years 1934, 1935, and 1936 for land taken out of cotton production (R. 120, 136-139, 150, 165). At the conclusion of an investigation conducted during the period 1939-1941, the Secretary of Agriculture found that petitioners had not effected proper distributions of the payments made to them for the years 1933-1936 (R. 113-118). The Court of Claims made like findings (R. 107, 110). Thus, for 1933, petitioners allowed the share tenants to participate in the program only if a share tenant entitled to 75 per cent of the cotton would accept 66⅔ per cent of the government payment, or if a sharecropper entitled to 50 per cent of the

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[1] This provision was later enacted into law as an amendment to Section 8 of the Soil Conservation and Domestic Allotment Act by Section 102 of the Agricultural Adjustment Act of 1938, *infra*, pp. 12-13.

cotton would accept 33⅓ per cent of the government payment (R. 107, 110, 115). Further, payments were made to petitioners under an option provision of $29.16 per acre, but petitioners made the distribution to their tenants on a basis of $20.00 per acre (R. 110, 113-118). Under the 1934 program the Secretary found (R. 131-134), also as did the Court of Claims (R. 122-127), that petitioners had, contrary to the regulations, increased the amounts payable to them by a miscalculation of their base acreage. Petitioners also gave incorrect production figures as to the land described in each contract (R. 126-127). These methods of noncompliance by petitioners with regulations issued under the appropriate statutes were found by the Secretary of Agriculture and the Court of Claims to have been repeated in respect of the 1934-1936 program.[2]

Petitioners, under the Soil Conservation and Domestic Allotment Act of 1936, as amended, in 1938 were entitled to $77,000.56 as determined by the State Office of the Agricultural Adjustment Administration (R. 95). There was issued to petitioners, however, a Treasury check for only $2,587.44, and the balance of $74,413.12[3] was set-

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[2] 1934 Cotton Acreage Reduction Plan (R. 135); 1935 Cotton Acreage Reduction Plan (R. 135-144, 145-150); 1936 Agricultural Conservation Program (R. 150-164, 165-167).

[3] This sum (in the plea of setoff the amount appeared as $74,435.38 (R. 95)) is made up of the following items: (1) $23,009.69 withheld by petitioners from their tenants in the 1933 Cotton Adjustment Program (R. 95, 119); (2) $11,262.19 overpayment to the petitioners in the 1934 Cotton

off by respondent against overpayments found to have been made to petitioners in 1933, 1934, 1935, and 1936 (R. 95). Petitioners brought suit in the Court of Claims (No. 45779) seeking recovery of the sum so withheld (R. 1) to which the respondent pleaded the setoff (R. 5). The Court of Claims held that petitioners were not entitled to recover (R. 188).

Petitioners also brought suit in the Court of Claims (No. 45997) for $29,261.78 (R. 78) alleged to be due as a result of petitioners' participation in the soil conservation program for 1937 under the Soil Conservation and Domestic Allotment Act as amended. This amount was not paid to petitioners because the Secretary of Agriculture found that the cotton acreage planted by petitioners exceeded the base acreage alloted to them (R. 176). While the Court of Claims found there was insufficient evidence to show that petitioners' leases had been entered into or their operations carried out for the purpose of defeating the 1937 program (R. 176), it left undisturbed the Secretary's findings that the acreage of cotton planted had exceeded the cotton bases established (R. 175-176),

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Acreage Reduction Plan (R. 120, 135); (3) $542.67 withheld by petitioners from their tenants in the 1934 Cotton Acreage Reduction Plan (R. 135); (4) $12,715.32 overpayment to petitioners in the 1935 Cotton Acreage Reduction Plan (R. 135, 144); (5) $5,932.93 withheld by petitioners from their tenants in the 1935 Cotton Acreage Reduction Plan (R. 145, 150); (6) $19,014.19 overpayment to petitioners in the 1936 Agricultural Conservation Program (R. 150, 164); and (7) $1,958.39 improperly paid to petitioners instead of their tenants in the 1936 Agricultural Conservation Program (R. 165, 167).

and denied recovery on the ground that petitioners had not sustained the burden of showing that the denial of the payment by the Secretary of Agriculture was arbitrary or capricious (R. 186).

ARGUMENT

1. The findings of the Secretary of Agriculture in 1941, that there had been overpayments to the petitioners for the years 1933 to 1936 (R. 118-119, 135, 144, 149-150, 163-164, 165-167), could be reversed by the Court of Claims at all [4] only if such findings were shown to be arbitrary or capricious or if the Secretary had no authority in 1941 to review payments made in the period 1933-1936. We submit that neither circumstance was here present.

(a) The Agricultural Adjustment Act of 1933, the Soil Conservation and Domestic Allotment Act of 1936, and the Agricultural Adjustment Act of 1938 (Appendix, *infra,* pp. 11-13) all specifically provide that administrative findings, particularly when they have been approved by the Secretary of Agriculture, are to be final and conclusive. In this respect, see S. Rep. 1481, 74th Cong., 2d sess., pp. 7-8; H. Rep. 2079, 74th Cong., 2d sess., p. 11. Assuming, therefore, that the court below had jurisdiction to entertain the instant case on the ground

[4] There is a serious question as to whether the court below had any jurisdiction at all to review the Secretary's determination. See dissenting opinion of Chief Judge Hutcheson in *Aycock-Lindsey Corporation* v. *United States,* 171 F. 2d 518, 522-523 (C. A. 5). We urged below that no such jurisdiction exists (R. 180-186), and should certiorari be granted we shall urge this Court to consider that question.

that it arose under a law of the United States, the scope of its review was sharply limited, since the Secretary's findings could be impeached only "on the ground of fraud, or such gross mistake as necessarily implied bad faith." *United States* v. *Moorman,* No. 97, at this Term, decided January 9, 1950, slip opinion, p. 4.

Here, in each instance the determination of overpayment was based on findings of fact by the Secretary that petitioners had not divided the payments with their tenants or sharecroppers in the correct amounts (R. 115-118, 135, 166-167), or that the petitioners had planted cotton acreage exceeding their base acreage allotment (R. 131-134, 143-144, 163-164, 176). The record also shows that the findings were based on substantial evidence and that petitioners had ample opportunity to present their arguments to the administrative bodies (R. 111-176, 183). As the Court of Claims correctly stated (R. 183):

> * * * we must accept such findings as conclusive since plaintiffs' proof fails to establish that the findings of the * * * Secretary of Agriculture were arbitrary or capricious. There was certainly evidence to support such findings and decisions, as is shown by our special findings of facts herein. * * *

(b) Nor does the fact that it was not until 1941 that the Secretary found that overpayments had been made for the 1933-1936 period affect his juris-

diction to make that final determination.[5] There was no finding in the Court of Claims that any determination as to the qualifications of petitioners for payment had been made by the Secretary prior to 1941 (R. 187). Consequently petitioners cannot properly now assert that the initial determination made by the Secretary in 1941 constitutes a redetermination merely because payments had previously been made to petitioners. And even if the payments made prior to 1941 are to be considered as a "finding" by the Secretary relative to petitioners' claim, it is clear that such a "finding" would not be conclusive on the Secretary since the payments were made without a full disclosure of the facts by petitioners to the Secretary (R. 187).

Finally, petitioners' contention that payments for their participation in the 1937 program were denied because they adopted practices designed to defeat the purpose of the program (Pet. 6-7) is patently erroneous. The Secretary specifically found that petitioners were not entitled to payment under the regulations because their planted cotton

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[5] Contrary to petitioners' contention (Pet. p. 7), there is no conflict between the decision below and *Aycock-Lindsey Corporation* v. *United States*, 171 F. 2d 518 (C. A. 5). There the Secretary of Agriculture made no determination as the facts were agreed on, 171 F. 2d at 522. The court there held it had jurisdiction of a suit against the United States for payments under the Tucker Act, 28 U. S. C. 1346, and that the only question presented was one of law, *i.e.*, whether two corporations should be considered as one with respect to the $10,000 limitation on payments to one participant in the programs under the Soil Conservation and Domestic Allotment Act of 1936 and the Agricultural Adjustment Act of 1938.

acreage exceeded their base acreage allotment (R. 176). Therefore, the finding of the Court of Claims that petitioners' operations were not carried out for the purpose of defeating the 1937 program (R. 176) is irrelevant. The pertinent matter here is, as pointed out by the Court of Claims (R. 186), that petitioners did not show that the denial of the 1937 payments was arbitrary or capricious.[6]

2. The Court of Claims correctly held that, overpayments having been made, they should be set off against the amount admittedly due for the year 1938. 28 U. S. C. (1946 ed.) 250(2); 31 U. S. C. (1940 ed.) 221; *Barry* v. *United States,* 229 U. S. 47, 53; *Wisconsin Central Railroad Company* v. *United States,* 164 U. S. 190, 210-211. *Kruszewski* v. *United States,* 163 F. 2d 884 (C. A. 7), relied upon by petitioners (Pet. 6), is not to the contrary. That case involved a redetermination by the Comptroller General of an account previously allowed by him and approved by Congress. Moreover, the statute which the court there held to preclude such revision was 31 U. S. C. 74. But that statute, originally made applicable to the Comptroller of the Treasury (The Dockery Act, 28 Stat. 207) and subsequently modified to apply to the Comptroller General, did not limit other officers of the Government. It is par-

[6] While *Aycock-Lindsey Corporation* v. *United States, supra,* held *obiter* that compliance with the program would entitle the participant to payments, that holding is of no consequence here where petitioners have not shown compliance with the regulations (R. 176).

ticularly inapplicable where, as here, a later statute expressly confers blanket powers on a government official to determine the amount due. *Hinkley & Powers* v. *United States,* 49 C. Cls. 148, and *United States* v. *Olmstead,* 118 Fed. 433 (C. A. 8) also relied on by petitioners, are inapposite. Both illustrate an attempted revision of accounts by the Comptroller of the Treasury to which the Dockery Act then applied.[7]

CONCLUSION

The decision of the court below is clearly correct and no conflict of decision exists. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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FEBRUARY, 1950

[7] In this setting, cases such as *Enright* v. *United States,* 73 C. Cls. 416, are inapplicable. While the burden of proving the amount of a setoff is ordinarily on the defendant, that burden has been met when the setoff is supported by an administrative finding which is made final and conclusive by law unless proved to have been arbitrary and capricious.

APPENDIX

Agricultural Adjustment Act of 1933 (48 Stat. 31).

SEC. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments. * * *

* * * * *

SEC. 10 [7 U.S.C. 610] * * *

(c) The Secretary of Agriculture is authorized * * * to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him * * *.

* * * * *

(e) The action of any officer, employee, or agent in determining the amount of and in making any rental or benefit payment shall not be subject to review by any officer of the Government other than the Secretary of Agriculture or Secretary of the Treasury.

Supplemental Appropriation Act of February 11, 1936, c. 49 (49 Stat. 1109, 1117, as amended by the Act of June 25, 1936, c. 810, 49 Stat. 1925).

> * * * *Provided,* That such funds shall be available for rental and benefit payments in an amount that the Secretary determines to be fair and equitable to farmers who have applied for contracts, and who prior to January 6, 1936, have in good faith made adjustments in acreage and otherwise substantially complied with the requirements of the Secretary of Agriculture in connection with a crop program, regardless of whether contracts have been signed; and the determination of the Secretary as to the correct base acreage and production figures (regardless of the figures on which the contract was based) and as to the person or persons entitled to receive such fair and equitable payments shall be final and conclusive. * * *

Soil Conservation and Domestic Allotment Act of 1936 (49 Stat. 1148, 16 U.S.C. 590n).

> SEC. 14. The facts constituting the bases for any payment or grant or the amount thereof * * * when officially determined in conformity with rules or regulations prescribed by the Secretary of Agriculture, shall be reviewable only by the Secretary of Agriculture.

Agricultural Adjustment Act of 1938 (52 Stat. 31).

> SEC. 102 [16 U.S.C. 590h]. Section 8 of the Soil Conservation and Domestic Allotment

Act, as amended, is further amended by adding a new subsection as follows:

"(e) Payments made by the Secretary to farmers under subsection (b) shall be divided among the landlords, tenants, and sharecroppers of any farm, with respect to which such payments are made, in the same proportion that such landlords, tenants, and sharecroppers are entitled to share in the proceeds of the agricultural commodity with respect to which such payments are made, * * *."

* * * * *

SEC. 385 [7 U.S.C. 1385]. The facts constituting the basis of any Soil Conservation Act payment, parity payment, or loan, or the amount thereof, when officially determined in conformity with the applicable regulations prescribed by the Secretary or by the Commodity Credit Corporation, shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government.

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